

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

JERRY MARTINEZ;

Plaintiff,

vs.

THE STATE OF NEW MEXICO,  
NEW MEXICO DEPARTMENT  
OF PUBLIC SAFETY, and  
NEW MEXICO STATE POLICE OFFICER  
NATHAN SEARLE,

Defendants.

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1441(b) and 1446(a) and (b), Defendants the State of New Mexico, New Mexico Department of Public Safety, and Officer Nathan Searle, by and through their undersigned counsel, New Mexico Risk Management Division, give Notice of Removal to this Court of the civil action filed in the First Judicial District Court for the State of New Mexico, County of Santa Fe, Cause No. D-101-CV-2013-02712, filed by Jerry Martinez, Plaintiff, and as grounds therefore state:

1. On October 16, 2013, Plaintiff filed a Complaint for Damages ("Complaint") with the First Judicial District Court. A copy of the Complaint is attached hereto as Exhibit A.
2. Defendants were served on October 29, 2013. A copy of the Summons is attached hereto as Exhibit B.
3. This Notice of Removal is timely as it was filed within thirty (30) days of October 29, 2013, when the Complaint was served on Defendants.

4. All Defendants, by and through their undersigned counsel, consent to the removal of this action.
5. Pursuant to 28 U.S.C. § 1446(d), copies of the Notice of Removal will be promptly given to all adverse parties and a copy of the Notice of Removal will be filed with the Clerk of the First Judicial District Court, County of Santa Fe, State of New Mexico.
6. The claims stated against Defendants that are subject to the original jurisdiction of the Court pursuant to 28 U.S.C. 1331 and 1343(a)(3) and (4) are as follows:
  - a. Count I of Plaintiff's Complaint, alleging an unreasonable seizure in violation of the Fourth Amendment to the U.S. Constitution. See Exhibit A, Count I, pp. 3-4, ¶¶ 32-37.
  - b. Count II of Plaintiff's Complaint, alleging unlawful arrest and malicious prosecution in violation of the Fourth Amendment to the U.S. Constitution. See Exhibit A, Count II, pp. 4-5, ¶¶ 38-43.
  - c. Count III of Plaintiff's Complaint, alleging violations of the Americans with Disability Act. See Exhibit A, Count III, pp. 5-6, ¶¶ 44-53.
7. Federal questions thus appear on the face of Plaintiff's Complaint.
8. Pursuant to Rule 81.1(a) of the Local Rules of the United States District Court for the District of New Mexico, Defendants will file a Notice of Filing of State Court Record and certified copies of the pleadings filed in the First Judicial District for the State of new Mexico, County of Santa Fe, Cause No. D-101-CV-2013-02712, within thirty (30) days of filing this Notice of Removal. A Civil Cover Sheet is attached as Exhibit C.

Respectfully submitted,

State Risk Management Division

By: /s/ Moses B. Winston

Moses B. Winston

P.O. Box 6850

Santa Fe, NM 87502

(505) 827-2553

*Attorney for Defendants*

moses.winston@state.nm.us

**I HEREBY CERTIFY** that on the 26<sup>th</sup> Day of November, 2013  
I filed the foregoing electronically through the CM/ECF System,  
which caused the following parties or counsel to be served by electronic means,  
as more fully reflected on the Notice of Electronic Filing;

KENNEDY LAW FIRM

Joseph P. Kennedy

1000 Second Street NW

Albuquerque, New Mexico 87102

/s/ Moses B. Winston

Moses B. Winston

FILED IN MY OFFICE  
DISTRICT COURT CLERK  
10/16/2013 3:26:57 PM  
STEPHEN T. PACHECO

STATE OF NEW MEXICO  
COUNTY OF SANTA FE  
FIRST JUDICIAL DISTRICT COURT

jam

JERRY MARTINEZ,

Plaintiff,

v.

CV D-101-CV-2013-02712

THE STATE OF NEW MEXICO,  
NEW MEXICO DEPARTMENT  
OF PUBLIC SAFETY, and  
NEW MEXICO STATE POLICE OFFICER  
NATHAN SEARLE,

Defendants.

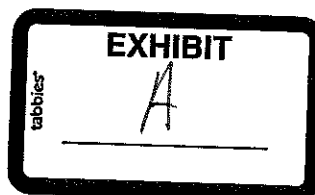
COMPLAINT TO RECOVER DAMAGES FOR  
DEPRIVATION OF CIVIL RIGHTS

JURISDICTION AND VENUE

Plaintiff brings this Complaint under 42 U.S.C. Section 1983 for damages resulting from the Deprivation of Civil Rights and Title II of the Americans with Disabilities Act. This Court has subject matter jurisdiction pursuant to 28 U.S.C § 1331. Personal jurisdiction is proper since Defendants are the State of New Mexico and state employees.

PARTIES

1. Plaintiff Jerry Martinez ("Plaintiff") is an individual who is a resident of Tucumcari, County of Quay, State of New Mexico.
2. Defendant Searle ("Defendant") is a law enforcement officer for the State of New Mexico. Defendant was acting under color of state law and in the course and scope of his employment as a law enforcement officer with the State of New Mexico.
3. Defendant New Mexico Department of Public Safety is a public entity in the State of New Mexico.



4. Defendant State of New Mexico is a State in the United States of America.

FACTUAL BACKGROUND

5. On April 18, 2013, at or around 4:45 PM, Defendant alleges in his police report he was conducting a Sobriety Check Point.

6. Defendant Searle alleges he was directing traffic into a single lane.

7. Plaintiff was driving his vehicle and merged into the single lane when he approached the orange cones.

8. Plaintiff made no traffic violations.

9. Defendant initiated a traffic stop on Plaintiff by ordering Plaintiff to produce his license, registration and proof of insurance.

10. Defendant's stop of Plaintiff did not conform to the parameters of the random DUI check point.

11. Plaintiff could not produce proof of insurance.

12. Defendant asked Plaintiff to exit his vehicle.

13. Defendant asked Plaintiff to perform field sobriety tests.

14. Defendant alleged that Plaintiff informed Defendant that he had recently had foot surgery and had trouble balancing.

15. Plaintiff has severe impairments including learning disabilities and had difficulty performing the field sobriety tests.

16. Plaintiff failed the field sobriety tests and Defendant arrested Plaintiff for Driving While Under the Influence.

17. Plaintiff was adjudicated as having these severe impairments in February 2013, and was determined to be limited when understanding and following directions.

18. Plaintiff's disabilities qualified him for Disability Benefits.
19. Plaintiff's twelve year old son was in the car.
20. Defendant called CYFD to report child abuse.
21. Plaintiff consented to a blood draw test which was obtained at or around 6:45 PM.
22. Plaintiff was transported to the Quay County Adult Detention Center.
23. Defendant then filed a criminal complaint against Plaintiff for four counts, including the third degree felony for child abuse.
24. Plaintiff was not intoxicated.
25. On April 23, 2013, the Scientific Laboratory Division received Plaintiff's blood sample dated April 18, 2013.
26. Plaintiff's blood sample was analyzed on April 24, 2013 and his blood alcohol tested as at a 0.00 gms/100mL.
27. Plaintiff's blood sample was reviewed on April 26, 2013.
28. On June 1, 2013, Defendant received the blood sample results.
29. On June 5, 2013, Plaintiff's criminal defense counsel moved to dismiss the charges.
30. Plaintiff spent a week in jail waiting for his blood test results.
31. Plaintiff spent about \$3,500.00 to defend against the criminal charges.

**COUNT I -- UNREASONABLE SEIZURE**  
**(Against Defendant Searle)**

Plaintiff incorporates herein his allegations in previous paragraphs as if stated herein.

32. Defendant deprived Plaintiff of his Fourth Amendment right to be secure in his person by initiating a traffic stop outside of the parameters of the DUI checkpoint, and without probable cause that Plaintiff had committed a traffic violation.
33. The detention of Plaintiff was wrongful, without probable cause and deprived Plaintiff of

his Fourth Amendment Right to be free of unreasonable seizures and of his rights under Article II, Section 10 of the New Mexico Constitution.

34. Defendant officer lacked probable cause to ask Plaintiff to exit his vehicle.

35. Defendant should have known that Plaintiff was suffering from a disability which contributed to his conduct. Plaintiff informed Defendant of his disability.

36. The actions of Defendant proximately caused damages to Plaintiff in loss of liberty, embarrassment, humiliation, mental and emotional distress, and economic losses.

37. Defendant acted willfully, knowingly and purposefully and/or with deliberate indifference to deprive the Plaintiff of his Constitutional Rights. As a result of the nature of Defendant's conduct, Plaintiff is entitled to recover punitive damages against the individual Defendant.

**COUNT II -- UNLAWFUL ARREST AND MALICIOUS PROSECUTION**  
**(Against Defendant Searle)**

Plaintiff incorporates herein his allegations in previous paragraphs as if stated herein,

38. Defendant arrested Plaintiff for driving under the influence and child abuse and filed or caused to be filed a criminal complaint.

39. Defendant knew, or should have known, that Plaintiff had not committed any crime.

40. Defendant lacked probable cause to arrest and charge Plaintiff with a crime.

41. Defendant deprived Plaintiff of his Fourth Amendment rights to be secure in her person by arresting him and charging him without probable cause.

42. The actions of Defendant proximately caused damages to Plaintiff in loss of liberty, embarrassment, humiliation, pain and suffering and mental and emotional distress.

43. Defendant acted willfully, knowingly and purposefully and/or with deliberate indifference to deprive the Plaintiff of his Constitutional Rights. As a result of the nature of

Defendant's conduct, Plaintiff is entitled to recover punitive damages against the individual Defendant.

**COUNT III - VIOLATION OF TITLE II OF THE  
AMERICANS WITH DISABILITIES ACT  
(Against Defendant State and Department)**

Plaintiff incorporates their allegations in previous paragraphs as if stated herein.

44. Defendants are a public entity as defined by the Americans with Disabilities Act, 42 U.S.C. § 12131(1)(B) (1990);
45. Defendants do not have sovereign immunity for claims arising under the Americans with Disabilities Act, 42 U.S.C. § 12202 (1990).
46. Plaintiff was a qualified individual with a disability as defined by the Americans with Disabilities Act, 42 U.S.C. § 12131(2) (1990).
47. On the basis of his disability, Plaintiff was denied the benefits of services, programs, and activities of the Department of Public Safety, including but not limited to the benefits of:
  - a. encounters with officers properly trained to deal with citizens who suffer from severe learning disabilities.
  - b. being treated with dignity by the government entity sworn to protect its community's citizens.
48. Defendant Searle wrongfully arrested Plaintiff when he misperceived the effects of Plaintiff's disability as criminal activity.
49. On the basis of his disability, Defendants discriminated against Plaintiff for arresting Plaintiff for the manifestations of his disability.
50. Defendant failed to provide adequate accommodations for disabled persons such as Plaintiff while conducting field sobriety tests.
51. Defendants failed to provide adequate accommodations when they placed Plaintiff in jail for a week.

52. Defendants violated Title II of the Americans with Disabilities Act when they discriminated against Plaintiff and when they failed to provide adequate accommodations to Plaintiff.

53. As a result of Defendants' conduct, Plaintiff suffered damages.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff seeks the following relief:

- I. Actual and compensatory damages sufficient to make Plaintiff whole;
- II. Punitive damages against Defendant officer sufficient to punish him and to deter further wrongdoing;
- III. Attorneys' fees, litigation expenses, costs, pre- and post-judgment interest as provided by law; and
- IV. Such other and further relief as the Court deems just and proper.

Respectfully submitted,

/s/ Joseph P. Kennedy

KENNEDY LAW FIRM

Joseph P. Kennedy

1000 Second Street NW

Albuquerque, New Mexico 87102

(505) 244-1400 fax (505) 244-1406

Received @ 10/29/2013

@ 2:57 pm

luke  
Tinker

SUMMONS	
District Court: FIRST JUDICIAL Santa Fe County, New Mexico Court Address: Post Office Box 2268 / 225 Montezuma Ave. Santa Fe, New Mexico 87504 / 87501 Court Telephone No.: 505-455-8250	Case Number: D-101-CV-2013-02712  Assigned Judge: Sarah Singleton
Plaintiff(s): Jerry Martinez v. Defendant(s): The State of New Mexico, New Mexico Department of Public Safety, and New Mexico State Police Officer Nathan Searle	Defendant Name: New Mexico Department of Public Safety 4491 Cerrillos Road Santa Fe, NM 87507

**TO THE ABOVE NAMED DEFENDANT(S):** Take notice that

1. A lawsuit has been filed against you. A copy of the lawsuit is attached. The Court issued this Summons.
2. You must respond to this lawsuit in writing. You must file your written response with the Court no later than thirty (30) days from the date you are served with this Summons. (The date you are considered served with the Summons is determined by Rule 1-004 NMRA) The Court's address is listed above.
3. You must file (in person or by mail) your written response with the Court. When you file your response, you must give or mail a copy to the person who signed the lawsuit.
4. If you do not respond in writing, the Court may enter judgment against you as requested in the lawsuit.
5. You are entitled to a jury trial in most types of lawsuits. To ask for a jury trial, you must request one in writing and pay a jury fee.
6. If you need an interpreter, you must ask for one in writing.
7. You may wish to consult a lawyer. You may contact the State Bar of New Mexico for help finding a lawyer at [www.nmbar.org](http://www.nmbar.org); 1-800-876-6657; or 1-505-797-6066.

Dated at Santa Fe, New Mexico, this 22 day of October, 2013.

STEPHEN T. PACHECO  
CLERK OF THE DISTRICT COURTBY: M. J. M. C.  
Deputy/s/ Joseph P. Kennedy

Signature of Attorney for Plaintiff/Pro Se Party

Name: The Kennedy Law Firm

Address: 1600 Second Street NW

Albuquerque, NM 87102

Telephone No.: (505) 244-1400

Fax No.: (505) 244-1406

Email Address:

[kennedylaw@civilrightsnewmexico.com](mailto:kennedylaw@civilrightsnewmexico.com)

THIS SUMMONS IS ISSUED PURSUANT TO RULE 1-004 OF THE NEW MEXICO RULES OF CIVIL PROCEDURE FOR DISTRICT COURTS.

EXHIBIT

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RETURN<sup>d</sup>

STATE OF NEW MEXICO )  
COUNTY OF \_\_\_\_\_ )ss

I, being duly sworn, on oath, state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served this summons in \_\_\_\_\_ county on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by delivering a copy of this summons, with a copy of complaint attached, in the following manner:

(check one box and fill in appropriate blanks)

☐ to the defendant \_\_\_\_\_ (used when defendant accepts a copy of summons and complaint or refuses to accept the summons and complaint)

☐ to the defendant by [mail] [courier service] as provided by Rule 1-004 NMRA (used when service is by mail or commercial courier service).

After attempting to serve the summons and complaint on the defendant by personal service or by mail or commercial courier service, by delivering a copy of this summons, with a copy of complaint attached, in the following manner:

☐ to \_\_\_\_\_, a person over fifteen (15) years of age and residing at the usual place of abode of defendant \_\_\_\_\_, (used when the defendant is not presently at place of abode) and by mailing by first class mail to the defendant at \_\_\_\_\_ (insert defendant's last known mailing address) a copy of the summons and complaint.

☐ to \_\_\_\_\_, the person apparently in charge at the actual place of business or employment of the defendant and by mailing by first class mail to the defendant at \_\_\_\_\_ (insert defendant's business address) and by mailing the summons and complaint by first class mail to the defendant at \_\_\_\_\_ (insert defendant's last known mailing address).

☐ to \_\_\_\_\_, an agent authorized to receive service of process for defendant \_\_\_\_\_.

☐ to \_\_\_\_\_, [parent] [guardian] [custodian] [conservator] [guardian ad litem] of defendant \_\_\_\_\_ (used when defendant is a minor or an incompetent person).

[ ] to \_\_\_\_\_, (name of person), \_\_\_\_\_, (title of person authorized to receive service. Use this alternative when the defendant is a corporation or an association subject to a suit under a common name, a land grant board of trustees, the State of New Mexico or any political subdivision).

Fees: \_\_\_\_\_

\_\_\_\_\_  
Signature of person making service

\_\_\_\_\_  
Title (if any)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_<sup>2</sup>

\_\_\_\_\_  
Judge, notary or other officer  
authorized to administer oaths

\_\_\_\_\_  
Official title

#### USE NOTE

1. Unless otherwise ordered by the court, this return is not to be filed with the court prior to service of the summons and complaint on the defendant.
2. If service is made by the sheriff or a deputy sheriff of a New Mexico county, the signature of the sheriff or deputy sheriff need not be notarized.

[Adopted effective August 1, 1988; as amended by Supreme Court Order 05-8300-01, effective March 1, 2005; by Supreme Court Order 07-8300-16, effective August 1, 2007; by Supreme Court Order No. 12-8300-026, effective for all cases filed or pending on or after January 7, 2013.]

EXHIBIT

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JS 44 (Rev. 12/12)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other documents as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required in the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

## I. (a) PLAINTIFFS

Jerry Martinez

(b) County of Residence of First Listed Plaintiff Quay County  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)  
Kennedy Law Firm  
1000 Second Street NW  
Albuquerque, NM 87102  
505-244-1400

## DEFENDANTS

County of Residence of First Listed Defendant Santa Fe County  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)  
New Mexico Risk Management Division  
P.O. Box 6850  
Santa Fe, NM 87502

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5            |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

## V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding  
☒ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from Another District (specify)  
☐ 6 Multidistrict Litigation

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
Removal under 28 U.S.C. § 1367

Brief description of cause:  
violation of Title II of ADA, Malicious prosecution, unreasonable seizure

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.  
DEMAND \$

CHECK YES only if demanded in complaint:  
JURY DEMAND: ☐ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

November 26, 2013

SIGNATURE OF ATTORNEY OF RECORD

Electronically filed by /s/ Moses B. Winston

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

JS 44 Reverse (Rev. 12/12)

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44****Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
  - (b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
  - (c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; NOTE: federal question actions take precedence over diversity cases.)
- III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. **Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. **Origin.** Place an "X" in one of the six boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.